In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 278

RALPH L. BORN,
Petitioner,

vs.

R. J. LAUBE, Administrator of the Estate of George Cease, deceased, and LOCAL UNION No. 959, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents.

PETITION FOR A REHEARING OF PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

BAILEY E. BELL,
P. O. Box 1599, Anchorage, Alaska,
Attorney for Petitioner.

WILLIAM H. SANDERS,
Anchorage, Alaska,
Of Counsel.

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To the Honorable Earl Warren, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices thereof:

The above named petitioner respectfully prays that a re-hearing be allowed in the above entitled matter for the following reasons, which affect this petitioner's rights:

The United States Court of Appeals for the Ninth Circuit, on the 26th day of May, 1954, entered a judgment in the above entitled case affirming the District Court of the Territory of Alaska, Third Judicial Division. This petitioner applied to the Supreme Court of the United States for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

On the 18th day of October, 1954, said petition for writ of certiorari was denied without opinion, insofar as this petitioner is able to learn. Petitioner prays this Honorable Court to grant a re-hearing and re-examine the petition for writ of certiorari and the facts brought before the Court in said case for the following reasons, to-wit:

That now we have two opinions by this Honorable Court, to-wit: The case of *United Construction Workers, Affiliated with United Mine Workers of America, et al. v. Laburnum Construction Corporation,* 74 S.Ct. 833, published in Supreme Court Reporter, July 1, 1954. This case, as shown in the petition for writ of certiorari, held that the Labor Management Relations Act of 1947 *did not* give the National Labor Relations Board such *exclusive jurisdiction* over the

subject matter of a common law tort action for damages, as to preclude an appropriate state court from hearing and determining its issues, even where such conduct constitutes an unfair labor practice under that Act.

Then, in the case at bar, the United States Court of Appeals for the Ninth Circuit upheld a judgment of the District Court for the Territory of Alaska, denying any recovery and dismissing the plaintiff's case, for the reason that the Labor Management Relations Act of 1947 *had given* exclusive jurisdiction to the National Labor Relations Board so as to deprive plaintiff of his common law tort action for damages where such conduct constitutes an unfair labor practice under that Act.

Now we have two decisions—we have the first above mentioned case holding that the Labor Management Relations Act of 1947 *did not* give the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common law tort action for damages, as to preclude an appropriate state court from hearing and determining its issues even where such conduct constitutes an unfair labor practice under the Act; and then, on the other hand, we have the decision in denying the writ of certiorari in this case, and thereby affirming a decision of the United States Court of Appeals for the Ninth Circuit in its affirmation of the District Court of the Territory of Alaska, Third Division, in holding that the Labor Management Relations Act of 1947 *has given* the National Labor Relations Board such exclusive jurisdiction

over the subject matter of a common law tort action for damages, so as to preclude an appropriate state court from hearing and determining its issues, where such conduct constitutes an unfair labor practice under that Act.

Since these two decisions are diametrically opposed and so long as they stand, no lawyer in the United States will be able to determine the question as to whether or not his client may maintain a common law tort action for damages *if the tortious acts complained of also constitute an unfair labor practice.*

We plead with this Honorable Court to compare the set of facts set up in our petition for writ of certiorari filed herein, with the facts set forth in the *United Construction Workers, et al. v. Laburnum Construction Corp.,* case decided by this Honorable Court. We believe the same question of law exists in each case and in one it is held that the jurisdiction *is exclusive* in the National Labor Relations Board, and in the other it is held that it *is not exclusive.*

Mr. Justice Burton, in delivering the opinion of the Supreme Court of the United States in the *United Construction Workers v. Laburnum Construction Corp.* case, above cited, held positively that the Act *did not* give the National Labor Relations Board such exclusive jurisdiction as to bar a common law tort action for damages, even though the tortious conduct constituted an unfair labor practice.

Judge Dimond, in the case at bar, held that the Act *did confer* exclusive jurisdiction on the National Labor Relations Board, and rendered judgment dis-

missing the plaintiff's complaint. This was confirmed by the United States Court of Appeals for the Ninth Circuit, and the denial of the petition for writ of certiorari affirmed said conflicting decision.

We most respectfully petition this Honorable Court to re-examine the petition for writ of certiorari filed herein, and to grant said writ.

Dated, Anchorage, Alaska,
November 8, 1954.

Respectfully submitted,
BAILEY E. BELL,
Attorney for Petitioner.

WILLIAM H. SANDERS,
Of Counsel.

Certificate of Counsel

I, Bailey E. Bell, counsel for the above named Petitioner, being of lawful age and a member of the Bar of the Honorable Supreme Court of the United States, do hereby certify that I prepared the Petition for Re-Hearing above set forth, and that I prepared the Petition for Writ of Certiorari referred to in the Petition for Re-Hearing. That the Petition for Re-Hearing is presented in good faith and not for the purpose of delay. That my signature as counsel is attached thereto. That I firmly believe that the Petition for Re-Hearing should be granted on the grounds therein set forth, and that the Petition for Re-Hearing is restricted to the grounds specified in Rule 58 of the Revised Rules of the Supreme Court of the United States, effective July 1st, 1954.

Dated at Anchorage, Alaska, this 8th day of November, 1954.

Bailey E. Bell,
Attorney for Petitioner.